

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF)

GRAND PROPERTIES LLC)
GRAND POINT MOTORCOACH RESORT)
FAIRHOPE, T6S, R2E, S1,)
BALDWIN COUNTY, ALABAMA)
NPDES REGISTRATION NO. ALR10BCBH)
_____)

ORDER 18-XXX-LD

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol. and 2014 Cum. Supp.), the Alabama Water Pollution Control Act (hereinafter “AWPCA”), Ala. Code §§ 22-22-1 to 22-22-14 (2006 Rplc. Vol. and 2014 Cum. Supp.) and the ADEM Administrative Code of Regulations (hereinafter “ADEM Admin. Code”) promulgated pursuant thereto, and § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342 (2012), the Alabama Department of Environmental Management [hereinafter “Department”] makes the following FINDINGS:

1. The Operator is an Alabama domestic limited liability company which is constructing the commercial development Grand Point Motorcoach Resort (hereinafter “Facility”) located in Fairhope T6S, R2E, S1 on Highway 104 past Lawrence Road near Fairhope, Baldwin County, Alabama. Sediment and other pollutants in stormwater runoff from the Facility have the potential to discharge and/or have discharged to an unnamed tributary to Pensacola Branch, a water of the State.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol. and 2014 Cum. Supp.).

3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol. and 2014 Cum. Supp.), the Department is the State Agency responsible for the promulgation and enforcement of the water pollution control regulations in accordance with the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1387 (2012). In addition, the Department is authorized to administer and

enforce the provisions of the AWPCA, Ala. Code §§ 22-22-1 through 22-22-14 (2006 Rplc. Vol. and 2014 Cum. Supp.).

4. The following references and acronyms are used in this Administrative Order and, when used, shall have the meaning of the name or title referenced below.

BMPs	Best Management Practices
CBMPP	Construction Best Management Practices Plan
NTUs	Nephelometric Turbidity Units
NOI	Notice of Intent
NPDES	National Pollutant Discharge Elimination System
QCP	ADEM-recognized Qualified Credentialed Professional
WL	Warning Letter

5. Pursuant to ADEM Admin. Code rs. 335-6-12-.05(1) and 335-6-12-.11(1), the Operator is required to register for and obtain NPDES coverage prior to commencing and/or continuing regulated disturbance activities.

6. On June 12, 2017, the Operator submitted to the Department an NOI requesting NPDES coverage under NPDES General Permit ALR10000 (hereinafter “Permit”) for regulated disturbance activities and discharges of treated stormwater from the Facility. The Department granted registration AL10BCBH to the Operator on June 13, 2017.

7. Pursuant to Part III. A. of the Permit, the Permittee shall design, install, and maintain effective erosion control and sediment controls, appropriate for site conditions. Sediment control measures, erosion control measures, and other site management practices must be properly selected based on site-specific conditions, must meet or exceed the technical standards outlined in the Alabama Handbook For Erosion Control, Sediment Control, And Stormwater Management On Construction Sites And Urban Areas published by the Alabama Soil and Water Conservation Committee (hereinafter the “Alabama Handbook”) and the site-specific CBMPP prepared in accordance with Part III. E.

8. Pursuant to Part III. E. of the Permit, construction activity may not commence until a CBMPP has been prepared in a format acceptable to the Department and certified by a QCP as adequate to meet the requirements of this Permit. The Permittee shall properly implement and regularly maintain the controls, practices, devices, and measures specified in the CBMPP.

9. During the inspection of the Facility on August 15, 2017, the Department observed and documented that, although NPDES construction activity had commenced and was continuing, the Operator had not properly implemented and maintained effective BMPs in violation of Parts III. A. and E. of the Permit.

10. Pursuant to Part III. I. of the Permit, the permittee shall promptly take all reasonable steps to remove, to the maximum extent practical, pollutants deposited offsite or in any waterbody or stormwater conveyance structure.

11. During the inspection of the Facility on August 15, 2017, accumulations of sediment resulting from discharges at the Facility were observed and documented by the Department offsite, in violation of Part III. I. of the Permit.

12. Pursuant to Part I. C. 9. of the Permit, the Permittee is not authorized to discharge stormwater where the turbidity of such discharge will cause or contribute a substantial visible contrast with the natural appearance of the receiving water.

13. During the August 15, 2017 inspection, the Department observed and documented that the Operator had caused a substantial visible contrast in the natural appearance of the receiving water, in violation of Parts I. C. 9. of the Permit.

14. On August 16, 2017, a WL was sent to the Operator by the Department as a result of August 15, 2017, inspection. The WL identified to the Operator areas of concern noted during the inspection and requested that these items be addressed and required the Operator to submit to the Department, within ten (10) days of receipt of the WL, conformation detailing how and when corrective action was taken to effectively address the items noted. The Department received the required report on August 31, 2017.

15. During the inspection of the Facility on October 24, 2017, the Department observed and documented that, although NPDES construction activity had commenced and was continuing, the Operator had not properly implemented and maintained effective BMPs in violation of Parts III. A. and E. of the Permit.

16. During the inspection of the Facility on October 24, 2017, accumulations of sediment resulting from discharges at the Facility were observed and documented by the Department offsite, in violation of Part III. I. of the Permit.

17. Pursuant to Part I. C. 10. of the Permit, the Permittee is not authorized to discharge stormwater where the turbidity of such discharge will cause or contribute an increase turbidity of the receiving water by more than 50 NTU's above background.

18. During the October 24, 2017 inspection, the Department observed and documented that the Operator had contributed to an increase of more than 50 NTU's in turbidity and caused a substantial visible contrast in the natural appearance of the receiving water, in violation of Parts I. C. 9. and 10. of the Permit.

CONTENTIONS

Pursuant to Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol. and 2014 Cum. Supp.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violations, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violations upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an Order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATIONS: The Department considered the general nature of each violation, the magnitude and duration of each non-compliant discharge, their effects, if any, on impaired waters, and any available evidence of irreparable harm to the environment or threat to the public. The Department determined the base penalty to be \$13,000.

B. THE STANDARD OF CARE: In considering the standard of care manifested by the Operator, the Department noted that violations continued to be observed at the Facility after issuing less formal enforcement. In consideration of this factor, the Department noted that the standard of care taken by the Operator was not commensurate with the applicable regulatory requirements and increased the penalty by an additional \$6,500.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Operator avoided certain costs associated with proper implementation and maintenance of BMPs. Based on the Department's estimates of these delayed costs and the timeframe of non-compliance, the Department determined that the Operator did derive a significant economic benefit from these violations and increased the penalty by an additional \$4,250.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATIONS UPON THE ENVIRONMENT: The Department is unaware of any efforts by the Operator to minimize or mitigate the effects of the violations upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department is unaware of any historical violations previous to those addressed herein.

F. THE ABILITY TO PAY: The Department is unaware of any evidence regarding the Operator's inability to pay the civil penalty.

G. OTHER FACTORS: In consideration of the additional expenditure of agency resources needed to resolve this administrative enforcement action, the Department enhanced the penalty by an additional \$5,000.

H. The Civil Penalty is summarized in the penalty synopsis.

ORDER

Based on the foregoing FINDINGS and pursuant to Ala. Code §§ 22-22A-5(10), 22-22A-5(12), and 22-22-9(i) (2006 Rplc. Vol. and 2014 Cum. Supp.), it is hereby ORDERED:

A. That the Operator shall pay to the Department a civil penalty in the amount of \$28,700 in settlement of the violations alleged herein within forty-five (45) days from the issuance of this Administrative Order. Failure to pay the civil penalty within forty-five (45) days from the

date of issuance of this Administrative Order may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. That all penalties due pursuant to this Administrative Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
PO Box 301463
Montgomery, Alabama 36130-1463

C. That the Operator shall take immediate action to prevent, to the maximum extent practicable, sediment and other pollutants in stormwater leaving the Facility and prevent noncompliant and/or unpermitted discharges of pollutants to waters of the State.

D. That, within five (5) days of the date of issuance of this Administrative Order, the Operator shall have a QCP perform a comprehensive inspection of the Facility, offsite conveyances, and affected State waters.

E. That, within ten (10) days of the date of issuance of this Administrative Order, the Operator shall submit to the Department a detailed plan, prepared/certified by a QCP, for the removal and/or remediation of sediment and other pollutants deposited offsite and/or in State waters.

F. That, within thirty (30) days of the date of issuance of this Administrative Order, the Operator shall fully implement effective BMPs, designed by a QCP, that meet or exceed the technical standards outlined in the Alabama Handbook, the site CBMPP plan, and NPDES General Permit ALR100000, and correct all deficiencies at the Facility and offsite conveyances, including sediment removal or remediation.

G. That within seven (7) days of the completion of the activities required in paragraph F. above, the Operator shall submit to the Department a certification signed by the QCP that effective BMPs that meet or exceed the technical standards outlined in the Alabama Handbook, the site CBMPP plan, and NPDES Permit ALR100000 have been implemented, all deficiencies

have been corrected, and full compliance with the requirements of NPDES Permit ALR100000, has been achieved at the Facility, offsite conveyances, and affected State waters.

H. That this Administrative Order shall not affect the Operator's obligation to comply with any federal, State, or local laws or regulations.

I. That final approval and issuance of this Administrative Order are subject to the requirements that the Department provide notice of proposed penalty Orders to the public, and that the public have at least thirty days within which to comment on the Administrative Order.

J. That, should any provision of this Administrative Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with federal or State law and therefore unenforceable, the remaining provisions herein shall remain in full force and effect.

K. That, except as otherwise set forth herein, this Administrative Order is not and shall not be interpreted to be a permit or modification of an existing permit under federal, State or local law, and shall not be construed to waive or relieve the Operator of the Operator's obligations to comply in the future with any permit coverage.

L. That failure to comply with the provisions of this Administrative Order shall constitute cause for commencement of legal action by the Department against the Operator for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this ____ day of June, 2018.

Lance R. LeFleur, Director
Alabama Department of
Environmental Management
1400 Coliseum Boulevard
Montgomery, AL 36110-2059
(334) 271-7700

ATTACHMENT 1 - PENALTY SYNOPSIS

**Grand Properties, LLC – GP RV Motorcoach Fairhope, Baldwin County
NPDES ALR10BCBH**

Violation	Number of Violations	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
Water Quality Standard Violation (Turbidity)	1	\$5,000	\$2,500	\$0
Discharge/accumulation of sediment offsite	1	\$5,000	\$2,500	\$0
Effective Best Management Practices (BMPs) not implemented and/or maintained	1	\$3,000	\$1,500	\$0
Totals:	3	\$13,000	\$6,500	\$0
Economic Benefit*:				\$4,200
Sub-Total:				\$23,700
Mitigating Factors*:				\$0
Ability to Pay*:				\$0
Other Factors*:				\$5,000
Amount of Initial Penalty:				\$28,700
Total Adjustments:				\$0
Final Penalty:				\$28,700

*See the "Department's Contentions" portion of the Order for a detailed description of each violation and the penalty factors.